

**DATE:** November 3, 2004  
**TO:** Members of the Commission for the Revision of the Rules of Professional Conduct  
**FROM:** Lauren McCurdy  
**SUBJECT:** Agenda for Your Meeting on Friday, November 19, 2004 in Los Angeles

Enclosed, please find the agenda materials for your November 19, 2004 meeting.

The meeting is scheduled as follows:

**Friday, November 19, 2004  
(9:00 am - 5:00 pm)**

**State Bar Office – Los Angeles  
1149 So. Hill Street, Room 723  
Los Angeles, CA 90015**

***DECEMBER MEETING DEADLINES – NOVEMBER 8th and 15th***

It is anticipated that the following items will be on the December 10, 2004 meeting agenda (see those items highlighted in red on the November meeting agenda). Depending on the item, there are deadlines of November 8th and 15th.

- a. Rule 3-110 (**Vapnek-lead**, Peck, Ruvolo)
- b. Counterpart to 1-310X re lawyers influencing lawyers (**Ruvolo (lead)**, Tuft, Vapnek, Mohr)
- c. Consideration of Kurt's concern regarding clients having to waive attorney-client privilege (**Melchior-lead**, Julien, Tuft)
- d. Rule 3-120 (**Ruvolo-lead**, Foy, Julien)
- e. Rule 3-210 (**Tuft-lead**, Foy, George) - new rule assignment
- f. Rule 3-300 (**Lamport-lead**, Tuft, Voogd) - new rule assignment

**ATTENDANCE:** In order to ensure that there is a quorum and adequate participation, if you are unable to attend in-person, please contact staff to make arrangements by telephone. As always, notify staff if you are unable to attend a meeting under any circumstances.

***REMINDERS FROM THE CHAIR***

1. The lead drafter is responsible for getting the assignment to staff in time for the agenda distribution. If that person cannot timely complete the assignment, he or she must get a substitute who will complete the assignment on time and advise staff and the chair of this substitution.
2. If a person has not sent comments on an agenda item by e-mail prior to the meeting, he or she may, at the Chair's discretion, only get one opportunity to comment on that agenda item. Anyone sending e-mail comments on an agenda item should send copies to all Commission members, staff and our consultant. Please note: all e-mails exchanged will be made part of the open session agenda materials; and, members who send e-mails will not be bound by the positions taken therein as the deliberative process at the meeting will not be constrained or prejudiced by the exchange of e-mails.

/lmm  
enclosures  
cc: Marie Moffat

**STATE BAR OF CALIFORNIA**  
**COMMISSION FOR THE REVISION OF THE RULES**  
**OF PROFESSIONAL CONDUCT**

**OPEN SESSION AGENDA**

**Friday, November 19, 2004**  
(9:15 am - 12:30 and 1:00 - 5:00 pm)

**LA–State Bar Office**  
**1149 So. Hill Street, Room 723**  
**Los Angeles, CA 90015**

*[NOTE RE MEETING SITE: For members of the public, the open session portion of this meeting also can be accessed by video-conference from the State Bar Office in San Francisco at 180 Howard Street, Room 8-B. Members of the public who wish to attend this meeting at either site are asked to call Audrey Hollins at 415-538-2167.]*

**I. APPROVAL OF OPEN SESSION ACTION SUMMARY FROM THE AUGUST 27 & 28, 2004 & OCTOBER 8, 2004 MEETINGS**

(Draft action summary for the August 27 & 28, 2004 and October 8, 2004 meetings to be circulated prior to the November meeting.)

**II. REMARKS OF CHAIR**

**A. Chair's Report**

(The Chair will provide an oral report on administrative, procedural, or other informational matters.)

**B. Staff's Report**

(Materials enclosed. Staff will report on the activities of COPRAC and the Board of Governors.) ***[pages 1 – 10]***

III. **MATTERS FOR ACTION** (Name with asterisk is lead drafter, underline indicates a newly added co-drafter.)

\*Lamport  
Julien  
Melchior  
Ruvolo  
Tuft

- A. **Consideration of Rule 1-100. Rules of Professional Conduct, in General**  
[anticipated 1-1/2hour discussion]  
(Materials enclosed.) ***[pages 11 – 20]***

\*Martinez  
Sapiro  
Voogd

- B. **Consideration of Rule 2-100. Communication With a Represented Party**  
[anticipated 1-hour discussion]  
(Materials enclosed.) ***[pages 21 – 44]***

\*Tuft  
Martinez  
Peck

- C. **Law Firm Definition** (previously considered as part of proposed new rule 1-310X and proposed amended rule 2-200)  
[anticipated 1-hour discussion]  
(Matter carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only issues raised in comments from Jerry Sapiro dated October 6, 2004 and from Kurt Melchior dated October 3, 2004 (sent by Enica Allen on October 4, 2004), and any issues raised by the codrafters in the October agenda materials, will be considered.) ***[pages 45 – 54]***

\*Melchior  
Martinez  
Sapiro

- D. **Consideration of Rule 2-300. Sale or Purchase of a Law Practice of a Member, Living or Deceased**  
[anticipated 1/2-hour discussion]  
(Matter carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only issues identified in the Chair's e-mail dated October 4, 2003 together with any issues raised by the codrafters will be considered.) ***[pages 55 – 110]***

\*Voogd  
George  
Tuft

- E. **Consideration of Rule 3-200. Prohibited Objectives of Employment**  
[anticipated 1-hour discussion]  
(Carried over from October 8, 2004 meeting. October meeting materials enclosed. As previously indicated, only the issues raised in Kevin Mohr's October 5, 2004 e-mail compilation and any issues raised by the co-drafters in the October agenda materials, will be considered.)  
**[pages 111 – 126]**

\*Peck  
George  
Martinez

- F. **Consideration of Rule 2-400. Prohibited Discriminatory Conduct in a Law Practice**  
[anticipated 1-hour discussion]  
(Materials enclosed.) **[pages 127 – 144]**

\*Vapnek  
Peck  
Ruvolo

- G. **Consideration of Rule 3-110. Failing to Act Competently**  
(The chair has postponed consideration of this agenda item until the **December 10<sup>th</sup> meeting**. Codrafters are assigned to submit materials to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

**All Members**

\*Ruvolo  
Tuft  
Vapnek  
Mohr

- H. **Counterpart to Rule 1-310X re Lawyers Influencing Lawyers**  
(The chair has postponed consideration of this agenda item until the **December 10<sup>th</sup> meeting**. Commission members are assigned to review the draft prepared by Nace Ruvolo, dated 9/20/04 (recently distributed to you with the October 22, 2004 assignment mailing), and send any comments to the codrafters by 12:00 noon on **Monday, November 8**. *Only comments or objections received by 12:00 noon on November 8 will be considered at the December meeting.*)

\*Melchior  
Julien  
Tuft

- I. **Consideration of Proposed New Rule or Amended Rule Prohibiting a Request or Agreement to Waive the Attorney-Client Privilege**  
(The chair has postponed consideration of this agenda item until the **December 10<sup>th</sup> meeting**. Codrafters are assigned to submit materials to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

\*Tuft  
Martinez  
Peck

- J. Consideration of Rule 5.4. Professional Independence of a Lawyer (aka Rule 1-310X)**  
[anticipated 1-hour discussion]  
(Materials enclosed.) *[pages 145 – 160]*

***In addition to Items G., H. & I. above, the following items will also be considered at the December 10<sup>th</sup> meeting:***

***All Members***

\*Ruvolo  
Foy  
Julien

- K. Consideration of Rule 3-120. Sexual Relations With Client**  
(Codrafters are assigned to consider and respond to the comment received from COPRAC (comment no. 2004-48), recently distributed to you with the October 22, 2004 assignment mailing, and prepare a redraft, if any, for submission to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials. Commission members are assigned to review the recommendation prepared by Nace Ruvolo (dated 9/20/04) as well as the comments by OCTC (comment no. 2001-01a), and COPRAC (comment no.2004-48), and send any comments to the codrafters by 12:00 noon on **Monday, November 8**. In addition to the aforementioned comments, only additional comments or objections received by 12:00 noon on November 8 date will be considered at the December meeting.)

\*Tuft  
Foy  
George

- L. Consideration of Rule 3-210. Advising the Violation of Law**  
(Co-drafters are assigned to prepare and submit a first draft of a proposed new rule or rule amendment to staff by 12:00 noon on **Monday, November 15** for distribution with the December agenda materials.)

\*Lamport  
Tuft  
Voogd

- M. Consideration of Rule 3-300. Avoiding Interests Adverse to a Client**  
(Matter carried over from October 8, 2004 meeting. Please refer to materials previously distributed with the open session October 8, 2004 meeting agenda (pages 169 - 174), as well as the 10 page compilation of e-mails prepared by Kevin Mohr for this rule on October 5, 2004. Only the concerns expressed in that compilation, together with any issues raised by the co-drafters in the October agenda materials, will be considered.

**STATE BAR OF CALIFORNIA**  
**COMMISSION FOR THE REVISION OF THE RULES**  
**OF PROFESSIONAL CONDUCT**

**CLOSED SESSION AGENDA\***

Friday, November 19, 2004  
(9:00 a.m - 9:15 a.m.)

LA–State Bar Office  
1149 So. Hill Street, Room 723  
Los Angeles, CA 90015

**I. APPROVAL OF CLOSED SESSION SUMMARY FROM THE AUGUST 27 & 28, 2004  
AND OCTOBER 8, 2004 MEETINGS**

(Draft action summaries to be circulated prior to November meeting.)

**II. ADVICE OF COUNSEL ON OPEN SESSION AGENDA ITEMS**

**III. ACTION ITEMS.**

**A. Emergency action items, if any.**

\* Closed pursuant to Article 3, Section 2, Subdivision (b), Rules Governing Open Meetings, Closed Sessions and Records of the Board of Governors.